

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FREE SPEECH COALITION, INC., et al.

Plaintiffs,

v.

THE HONORABLE ERIC H. HOLDER, JR.,
*in his official capacity as Attorney General
of the United States,*

Defendant.

CIVIL ACTION NO.: 09-4607

The Honorable Timothy J. Savage

ORDER

AND NOW, this _____ day of _____, 2009, upon consideration of Plaintiffs' Motion for Admission *Pro Hac Vice* of attorney Lorraine R. Baumgardner as Plaintiffs' counsel in the above-captioned action, it is hereby ORDERED that said Motion is GRANTED.

Savage, J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FREE SPEECH COALITION, INC., et al.)	CASE NO. 09-4607
)	
Plaintiffs,)	JUDGE TIMOTHY J. SAVAGE
)	
-vs-)	
)	
THE HONORABLE ERIC H. HOLDER, JR.,)	<u>MOTION FOR PRO HAC VICE</u>
Attorney General,)	<u>ADMISSION OF LORRAINE R.</u>
)	<u>BAUMGARDNER AS PLAINTIFFS'</u>
Defendant.)	<u>COUNSEL IN THE WITHIN ACTION</u>
)	<u>WITH VERIFICATION</u>
)	

Kevin E. Raphael, a member in good standing of the Pennsylvania bar, moves pursuant to Local Rule of Civil Procedure 83.5.2(b) and § I. E. of *Judge Savage's Scheduling and Motion Policies and Procedures*, for admission *pro hac vice* of Lorraine R. Baumgardner of Berkman, Gordon, Murray & DeVan, in Cleveland, Ohio, as Plaintiffs' counsel in this action challenging the constitutionality of 18 U.S.C. § 2257, 18 U.S.C. § 2257A and their implementing regulations, under the First, Fourth, and Fifth Amendments to the United States Constitution.

The grounds for this Motion follow.

ADMISSIONS

Lorraine R. Baumgardner has been a member in good standing of the bar of the State of Ohio (Bar No. 0019642) since her admission in November, 1980. Baumgardner has also been admitted to and is a member in good standing of the following federal courts:

- U.S. Supreme Court (10/2008)
- U.S. Court of Appeals for the Sixth Circuit (7/1982)
- U.S. District Court for the Northern District of Ohio (1980)

WHY COUNSEL IS ESPECIALLY QUALIFIED TO PARTICIPATE IN THIS CASE

Lorraine R. Baumgardner graduated with honors from the College of Wooster in 1977 and was awarded her J.D. from Case Western Reserve University School of Law in 1980, where she received the Lewis F. Powell, Jr. Medal for Excellence in Advocacy from the American College of Trial Lawyers.

Ms. Baumgardner has practiced law with J. Michael Murray, who also seeks admission *pro hac vice* in this matter, for 28 years. She has worked with Mr. Murray on many of his First Amendment cases in addition to those in other areas of the practice. Of particular relevance to this case, which challenges the constitutionality of 18 U.S.C. § 2257, 18 U.S.C. § 2257A and their implementing regulations, Ms. Baumgardner was the principal drafter of the pleadings and briefs in *Connection Distributing Co. v. Holder*, 557 F.3d 321 (6th Cir. 2009) (en banc) *cert. denied*, Case No. 08-1449, October 5, 2009, a case involving First Amendment challenges to 18 U.S.C. § 2257 litigated over the course of fourteen years on behalf of the publisher of a sexually explicit swingers' magazine and its subscribers. See *Connection Distributing Co. v. Keisler*, 505 F.3d 545 (6th Cir. 2007) vacated, sub nom. *Connection Distributing Co. v. Mukasey*; *Connection Distributing Co. v. Reno*, 2002 WL 31119685 (6th Cir. 2002); *Connection Distributing Co. v. Reno*, 154 F.3d 281 (6th Cir. 1998) *cert denied* 526 U.S. 1087 (1999).

Ms. Baumgardner has likewise served as co-counsel with Mr. Murray in many of the First Amendment cases cited in the motion for his admission *pro hac vice* in this matter. Specifically, Ms. Baumgardner participated in the following cases.

Federal Appellate Court Decisions

Connection Distributing Co. v. Holder, 557 F.3d 321 (6th Cir. 2009) (en banc) *cert. denied*, Case No. 08-1449, October 5, 2009; *Connection Distributing Co. v. Keisler*, 505 F.3d 545 (6th Cir. 2007) vacated, sub nom. *Connection Distributing Co. v. Mukasey*; *Connection Distributing*

Federal Appellate Court Decisions, cont.

Co. v. Reno, 2002 WL 31119685 (6th Cir. 2002); *Connection Distributing Co. v. Reno*, 154 F.3d 281 (6th Cir. 1998) *cert denied* 526 U.S. 1087 (1999)
J. L. Spoons, Inc. v. Dragani, 538 F.3d 379 (6th Cir. 2008), *reh'g and reh'g en banc denied*, No. 07-3178, *cert. denied*, Case No. 08-1144, October 5, 2009
O'Neill v. Coughlan, 511 F.3d 638 (6th Cir. 2008), *reh'g and reh'g en banc denied*, No. 07-3206 *cert. denied*, __U.S.__; 129 S.Ct. 570 (2008)
Passions Video, Inc. v. Nixon, 458 F.3d 837 (8th Cir. 2006)
ETW Corp. v. Jireh Pub., Inc., 332 F.3d 915 (6th Cir. 2003)
Rock and Roll Hall of Fame and Museum, Inc. v. Gentile Productions, 134 F.3d 749 (6th Cir. 1998)
United States v. Jenkins, 46 F.3d 447 (5th Cir. 1995)
White Fabricating Co. v. United States, 903 F.2d 404 (6th Cir. 1990)

Federal District Court Decisions, reported

Abilene Retail 30, Inc. v. Board of Commissioners, 402 F. Supp. 2d 1285 (D. Kan. 2005)
Annex Books, Inc. v. City of Indianapolis, 333 F. Supp. 2d 773 (S.D. Ind. 2004)
Ferner v. Village of Sheffield, 656 F. Supp. 1017 (N.D. Ohio 1987)

Federal District Court Decisions, unreported

T. Weston, Inc. v. Mineral County, 2008 WL 3474146 (N.D. W. Va. 2008)
Bartow Retail 35, LLC v. County of Bartow, Case No. 05-003 (U. S. D. Ct., N.D. Ga.)
Route 62 Video and Books, Inc. v. City of Alliance, Case No. 02-1936 (U. S. D. Ct., N.D. Ohio)
Margaret R. Mueller v. The Hon. John F. Corrigan, et al., Case No. 84-1923 (U.S. D. Ct. N.D. Ohio)

Ms. Baumgardner has also co-counseled with Mr. Murray in many First Amendment matters in the state courts of Ohio and has participated in a range of other cases involving employment discrimination, sexual harassment, and overreaching by law enforcement; personal injury, product liability and medical malpractice suits; and various business litigation matters at the trial and appellate levels.

PLAINTIFFS' REASONS FOR RETAINING LORRAINE R. BAUMGARDNER AND BERKMAN, GORDON, MURRAY & DeVAN

Mr. Murray and his firm were selected to represent the plaintiffs in filing a federal lawsuit challenging the constitutionality of these laws after a process initiated by the Free Speech Coalition

in which a number of law firms nationwide were considered and interviewed. After a thorough review of the many candidates for the position, J. Michael Murray and his firm, including Ms. Baumgardner, were selected to represent Plaintiffs in this case, because of their experience in First Amendment litigation, in general, and in litigating the constitutionality of 18 U.S.C. § 2257, in particular.

Plaintiffs contend that Mr. Murray and his partner, Ms. Baumgardner, are especially qualified to represent them in this litigation.

Respectfully submitted,

Date: 10/09/09

/s/ Kevin E. Raphael
KEVIN E. RAPHAEL (72673)
KER@Pietragallo.com
J. PETER SHINDEL, JR. (201554)
JPS@Pietragallo.com
PIETRAGALLO GORDON ALFANO BOSICK &
RASPANTI, LLP
1818 Market Street, Suite 3402
Philadelphia, Pennsylvania 19103
(215) 320-6200
(215) 981-0082 (Facsimile)

Attorneys for Plaintiffs

DECLARATION

LORRAINE R. BAUMGARDNER states, under penalty of perjury, that the information contained in the foregoing Motion for *Pro Hac Vice* Admission of Lorraine R. Baumgardner is true and accurate.

Date: 10/9/2009


LORRAINE R. BAUMGARDNER

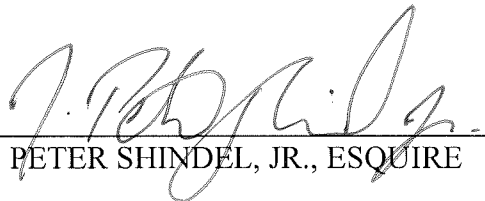
CERTIFICATE OF SERVICE

I certify that a true and correct copy of Plaintiffs' Motion for Admission of Lorraine R. Baumgardner *Pro Hac Vice* was served on this date on the individuals and in the manner described below

VIA ECF AND CERTIFIED MAIL

The Honorable Eric H. Holder, Jr.
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Michael L. Levy, Esquire
615 Chestnut Street
Suite 1250
Philadelphia, PA 19106



J. PETER SHINDEL, JR., ESQUIRE
Attorney for Plaintiffs

DATED: October 9, 2009